

January 13, 1997

The Honorable Earl I. Anzai
Director of Finance
Department of Budget and Finance
State of Hawaii
250 S. Hotel Street
Honolulu, Hawaii 96813

Dear Mr. Anzai:

Re: Requirement for Balanced Budget

This is in response to your oral request for our advice whether the proposed executive branch budget that is submitted to the Legislature at the beginning of a legislative session must be balanced, i.e., that the dollar amount of proposed expenditures must be equal to or less than the dollar amount of anticipated revenues.¹ We understand that it has been suggested that the budget could be submitted in an unbalanced condition, with the understanding that spending restrictions would be imposed after enactment so that actual expenditures would not exceed revenues and a balanced budget would result.

Short Answer

Although the express words "balanced budget" are not included in the Constitution or statutes relating to the state budget, the constitutional and statutory provisions do require a balanced budget by requiring a description of the proposed expenditures and the sources of revenues to pay for them. If there is a shortfall in resources to pay for the proposed expenditures, revenue enhancements to cover the deficit must be proposed or reductions in expenditures must be proposed to balance out the anticipated revenues.

Discussion

There is no express requirement for a balanced budget in either the State Constitution or the applicable statutes. However, in operation, a balanced budget is required. Sections 5, 8, and 9 of article VII of the State Constitution all relate to budget and spending, and all require a balanced budget. Section 5 of article VII provides that "[g]eneral fund expenditures for any fiscal year shall not exceed general fund revenues and unencumbered cash balances, except when the governor publicly declares the public health, safety or welfare is threatened as provided by law." Section 8 of article VII relates to the submission of the proposed executive biennium budget to the legislature at the beginning of the legislative session. That section provides in pertinent part: ([top](#))

Within such time prior to the opening of each regular session in an odd-numbered year as may be provided by law, the governor shall submit to the legislature a budget in a form provided by law setting forth a complete plan of proposed expenditures of the executive branch; estimates as provided by law of the aggregate expenditures of the judicial and legislative branches, and anticipated receipts of the State for the ensuing fiscal biennium, together with such other information as the legislature may require. . . . The governor shall also, upon the opening of each such session, submit bills to provide for such proposed expenditures and for any recommended additional revenues or borrowings by which the proposed expenditures are to be met. [Emphases added.]

The second paragraph of section 9 of article VII relates to what is commonly called the "supplemental budget" and has the same requirement as section 8 with respect to submission of bills for revenue enhancements that may be needed to pay for the proposed supplemental expenditures.

The Committee on Taxation and Finance of the Constitutional Convention of Hawaii of 1978 clearly stated in Standing Committee Report No. 66 that it was the intention of the convention delegates that the State have a balanced budget. ([top](#))

In testimony before your Committee, the necessity of establishing some form of limitation on state government spending received wide support. Basically, the movement to control government spending, here and elsewhere in the United States, has its origins in the genuine concern of taxpayers that the costs of government should not consume an increasing proportion of their income. Your Committee concurs that discipline needs to be exercised in the development and execution of spending policies and that the Constitution is a proper place to exert and motivate such discipline. The following constitute your Committee's proposals for a state spending limitation:

* * *

3. That the State shall balance its budget except when the governor publicly declares a threat to the public health, safety or welfare.

The intent of this amendment to Section 6 is to assure that the State does not circumvent the expenditure ceiling provided in proposed Section 5 by engaging in deficit spending.

1 Proceedings of the Constitutional Convention of Hawaii of 1978 at 653, 659 (1980). ([top](#))

The constitutional provisions are implemented in chapter 37, Hawaii Revised Statutes, particularly in sections 37-69 and 37-71. Section 37-69 provides in pertinent part:

(c) The financial plan for the ensuing six fiscal years shall more specifically include:

. . .

(5) Financial summaries displaying the State's financial condition, actual for the last completed fiscal year, and estimated for the fiscal year in progress and each of the next six fiscal years, including:

(A) A display of the programmed, total state expenditures, . . . the total state resources anticipated from existing tax and nontax sources at existing rates, . . . and the resulting fund balance or deficit at the close of each fiscal year. . . ; and

(B) The changes proposed to the existing tax and nontax rates, sources or structure, and the estimated increases or reductions in revenues, the estimated cumulative increases or reductions, and the estimated fund balance or deficit in each of the next six fiscal years as a result of such proposed changes. Proposals for changes in the existing tax and nontax rates, sources or structure shall be made in every case where the proposed, total state expenditures exceed the total resources anticipated from existing tax and nontax sources at existing rates. [Emphases added.] ([top](#))

Similarly, section 37-71, Hawaii Revised Statutes, provides in pertinent part:

(d) The summaries of the state receipts and revenues shall more specifically include:

(1) Financial summaries displaying the State's financial condition, to-wit:

(A) A display of the proposed, total state expenditures, . . . the total state resources anticipated from existing taxes and nontax resources at existing rates, . . . (including the available fund balances or deficits and anticipated bond receipts), and the fund balance or deficit resulting therefrom for the biennium in progress, for the ensuing

biennium, and for each of the two fiscal years of the ensuing biennium; and

(B) The changes proposed to the existing tax and nontax rates, sources, or structure, and the estimated cumulative increases or reductions, and the estimated fund balance or deficit in the ensuing biennium and in each of the two fiscal years of the biennium as a result of such proposed changes. Proposals for changes in the existing tax and nontax rates, sources, or structure shall be made in every case where the proposed total state expenditures exceed the total state resources anticipated from existing tax and nontax sources at existing rates. [Emphasis added.] ([top](#))

Thus, although the express words "balanced budget" are not included in the State Constitution or the statutes relating to the state budget, the Constitutional and statutory provisions require it by requiring a description of the proposed expenditures and the sources of revenues to pay for them. If there is a shortfall in resources to pay for the proposed expenditures, revenue enhancements to cover the deficit must be proposed, or reductions in expenditures must be proposed to balance out the anticipated revenues. ([top](#))

Budget Restrictions

Restrictions imposed pursuant to chapter 37, Hawaii Revised Statutes, are related to budget execution, rather than budget preparation, and do not reduce appropriations, because, until the end of the fiscal period, the restrictions can be lifted and the full amount of the appropriation can be expended. As we noted in our Opinion No. 83-4, "while the allotment system authorizes the governor to avoid wasteful expenditures in circumstances where the social purposes of the appropriation are not compromised or to reduce expenditures where unanticipated revenue shortfalls occur, it does not permit the executive branch to prioritize authorized expenditures and reallocate resources, for to do so would be an usurpation of the legislature's appropriation powers." ([top](#))

In Opinion No. 83-4 we further concluded:

[I]f savings in the general fund in a specific fiscal year, proposed to be created by the exercise of the executive spending power, are displayed in the budget as a State resource subject to appropriation in the same fiscal year, and further, if the appropriations parallel the budget's proposed expenditures, the net effect is that the legislature will, by law, establish certain levels of expenditures which will not be covered by anticipated resources, and the legislature and the executive branch must rely upon the executive spending power to avoid deficits. In such a situation the executive branch is being given the discretion of determining the levels of expenditure by use of its spending powers under the allotment system. . . . [W]e believe that such practice is contrary to the principle of separation of powers. ([top](#))

We believe that our conclusions made in 1983 are still correct.

If you have additional questions, please let me know.

Very truly yours,

Diane Erickson
Deputy Attorney General

APPROVED:

Margery S. Bronster
Attorney General

¹Black's Law Dictionary (6th ed. 1990) contains the following definition of "budget": "A statement of estimated revenues and expenses for a specified period of time, generally a year. A balanced budget is one in which revenues equals or exceeds expenditures. ([back to document](#))"